IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2007

CORAM

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

W.P.No.6060 of 2004

B.Jayakumar ... Petitioner

vs.

1. Bharat Sanchar Nigam Ltd., (BSNL)
rep. By its Chairman cum Managing Director,
No.20, Asoka Road,
New Delhi - 110 001.

2. The Chief General Manager,
Bharat Sanchar Nigam Ltd., (BSNL)
Tamil Nadu Circle,
Anna Salai, Chennai 600 002.

3. The Assistant General Manager (R & G)
Bharat Sanchar Nigam Ltd., (BSNL)
Tamil Nadu Circle,
Anna Salai, Chennai 600 002. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of ceriorarified mandamus calling for the records in RET/31-36/99 on the file of the second respondent and quash the order dated 17.03.2003 made therein and consequently direct the first respondent to appoint the petitioner on compassionate grounds in Group III category or any post equivalent thereto with all service benefits w.e.f. 05.11.1999.

For Petitioner : Mr.D.Saravanan
For Respondents : Mr.S.Velusamy, ACGSC

O R D E R

This writ petition has been filed praying to call for the records in RET/31-36/99 on the file of the second respondent and quash the order dated 17.03.2003 made therein and consequently direct the first respondent to appoint the petitioner on compassionate grounds in Group III category or any post equivalent thereto with all service benefits w.e.f. 05.11.1999.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. The brief facts leading to the filing of this writ petition are as follows :

(i) The petitioner's father, while working as Senior Section Supervisor (S.S.S.) in Central Telegraph Office, Chennai 600 001, (now known as Bharat Sanchar Nigam Ltd., (BSNL), a Government of India Enterprise) suddenly died intestate of brain stroke, leaving behind the petitioner, his mother and two other sons. He had two and a half years of service to his credit at the time of his death. Since he died while he was in service and that one of the representatives of the family members being eligible for a job in the Department, the petitioner, who is an under graduate in Science, was nominated by the family members for the same and his mother made representations on 05.11.1998 and 13.11.1998 nominating the petitioner for employment, in response to which the Chief Superintendent, Central Telegraph Office, Chennai 600 001, sent a requirement list dated 18.11.1998. The requirement list was duly complied with by the petitioner as early as on 28.11.1998 as per the norms prescribed in Appendix-2 of CCS (Pension) Rules. However, he was declined the offer of employment on untenable grounds through a communication dated 20.08.1999 from the Chief General Manager, Telecommunications, who is the second respondent herein.

(ii) The petitioner submitted a detailed reply to the second respondent vide letter dated 03.11.1999 with necessary enclosures explaining the actual facts. He clarified that his elder brother is an employee only in a Housing Finance Company named as INDBANK Housing Ltd., which was running under heavy loss since 1998 and that the same is neither a private sector nor a public sector Bank; he is living separately in a far-away place at Pudukottai along with his wife and children and further he is taking care of his paternal grandmother and that a sum of Rs.500/- per month is being paid to him from the monthly pension received by them on account of his father's death; that his wife is only a house-wife and there is no chance of any financial support from his elder brother to his family.

(iii) In the detailed reply, the petitioner further clarified that his younger brother was studying 3rd year B.E. without any scholarship either from the Government or from any Trust and that his education requires considerable expenditure which was being met and taken care of by the petitioner. He detailed that the plot measuring 1,800 sq. ft. was not owned by the petitioner as of that day as there was a balance of Rs.1,00,000/- to be paid to the Tamil Nadu Housing Board and that a sum of Rs.46,000/- was already borrowed by his father to be paid as advance for this purpose. The petitioner further clarified that they did not own the house and they were staying only in rented house in Villivakkam, paying a rent of Rs.2,000/- per month.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(iv) The petitioner submitted that the amount received as terminal benefits was used for funeral expenses of his father and certain amount had to be spent as Medical expenses for his mother, who suffered from various ailments due to the sudden demise of his father. He further submitted that he had spent considerable sum for the treatment given to his father, when he suffered Cerebral attack, due to which he was admitted in medicare centre, Washermanpet. It was also clarified by the petitioner that since proper nomination was not given by his father during his lifetime, 50% of GPF was paid to his grandmother, Mrs.Muthammal and therefore, his family members are living in an indingent condition.

(v) For the explanation submitted by the petitioner, the Chief General Manager, Telecommunications, Chennai 600 002 sent a reply stating that the request of the petitioner has not been acceded to. Hence, the petitioner submitted another representation on 01.01.2001 to the Director General (Estt.), the first respondent herein, detailing all the aspects but there was no positive response. Once again, the peittioner made a representation on 11.04.2001 to the Chairman-cum-Managing Director of the first respondent for which too there was no response. For the fourth time, the petitioner sent a representation to the second respondent, for which he received a communication on 03.04.2002, to produce certain documents which were duly complied with by him on 09.04.2002. Even after compliance of all requirements by the petitioner, there was no response from the respondents. Thereafter, the petitioner again sent a representation on 19.02.2003 to the second respondent, for which he received a communication dated 17.03.2003, rejecting his request reiterating the very same reasons. Aggrieved by the order of rejection of the second respondent, the petitioner has approached this Court for the relief as stated above.

3. The Deputy General Manager (Admn) in the Office of the second respondent in the counter affidavit filed on behalf of the respondents, has stated that compassionate ground appointments are given on verifying the indigent condition of the family of the deceased employees due to their sudden demise, after being duly recommended by the HPC constituted for this purpose and in the case of the petitioner, the Department has conducted Spot Verification and found that the family is not in an indingent situation based on the following facts.

(a) The family is receiving Rs.3325 + D.A. and has received Rs.4,12,800/- as Departmental benefits.
(b) Age of the applicant
(c) Working status of the elder son

4. The respondents denied the averments of the petitioner that his elder brother is working in the Housing Finance Company, viz., IndBank Housing Ltd., was running under heavy loss. According to the respondents, the reason given by the Department for rejecting the case of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

petitioner is correct as per the order in O.M.No.14014/6/94 Est(D), dated 09.10.1998. The respondents denied the statement of the petitioner that the terminal benefits received were not used to settle the family dues. In the petitioner's letter dated 03.11.1999, it is stated that they had spent Rs.35,000/- towards mother's treatment, Rs.10,000/- towards father's treatment, Rs.45,000/- towards funeral expenses and Rs.75,000/- towards 1st brother's marriage expenses. It is the case of the respondents that only 50% of the terminal benefits is being utilised by the petitioner.

5. Citing the Supreme Court judgment dated 28.02.1995 in the case of Life Insurance Corporation of India vs. Mrs.Asha Ramachandran Ambedkar and others (JT 1994 (2) SC 183), the respondents have contended that the High Courts and Administrative Tribunals cannot give direction for appointment of a person on compassionate ground, but can merely direct consideration of the claim of such an appointment. Compassionate ground appointment is offered to the dependent of the deceased employee on humanitarian grounds after assessing the financial status and it cannot be used a machinery/medium for getting employment.

6. The petitioner has filed a reply affidavit to the counter filed by the respondents, in which he has furnished the details of persons, who were appointed on compassionate grounds by the respondents. The respondents filed an additional counter affidavit denying the averments of the petitioner and detailing the grounds of compassionate appointments of the persons pointed out by the petitioner.

7. Heard Mr.D.Saravanan, learned Counsel for the petitioner and Mr.S.Velusamy, Additional Central Government Standing Counsel, appearing for the respondents.

8. Learned Counsel appearing for the petitioner contended that the second respondent has acted merely on presumptions and assumptions and consequently erred in denying appointment to the petitioner on compassionate grounds; the respondents ought to have applied their mind to the scheme which has the object to appoint on compassionate ground, a dependant family member of a Government Servant dying in harness who leaves his family in penury and without any means of livelihood, so as to relieve the family from financial destitution and to get over the emergency.

9. It was the further contention of the learned counsel for the petitioner that the respondents ought to have considered the explanation of the petitioner that the first son of the deceased was working only in a finance company and that by an order dated 09.07.2003, he has lost his job; the reasoning of the second respondent that the third son was studying B.E., 3rd year, and therefore the family of the petitioner is not in an indigent condition is totally unsustainable in law and in any event it is improper to expect one to discontinue the studies after the lifetime of his father. He also contended that the second respondent failed to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

take into consideration the fact that the entire terminal benefits was not received by them alone as 50 per cent of the GPF was distributed to the petitioner's paternal grandmother. Learned counsel also contended that the reason assigned by the second respondent that the petitioner is aged 32 years is totally not tenable in law and the fact remains that the petitioner was aged only 28 years when the first application was made.

10. Learned Counsel for the petitioner in support of his contentions has relied on the following judgments relevant portions of which are extracted hereunder:

(i) 2005 (1) LLJ 277 in the case of Subhash Chandra Yadav vs. State Bank of India and another, the High Court of Allahabad has held as follows :

> "7. Sri Vipin Sinha, learned Counsel for S.B.I., has stated that the two sons of the deceased are employed. In his argument, he has relied on the observations in the order of Chief General Manager dated June 2, 2001 that two elder sons are earning members. In our opinion, this is a very vague observation, if it is claimed that a person is employed somewhere, then the details must be given as to in which particular establishment he is employed and in what capacity and how much he is earning etc. If a mere vague allegation is made that a person is employed and in what capacity, then his application for appointment under the Dying in Harness Rules, can always be rejected by making such vague assertion. No details have been given even till today, as to where the 2 elder sons are said to be employed. Hence, we cannot accept this baseless assertion."

(ii) In (2005) 10 SCC 289 in the case of Govind Prakash Verma vs. Life Insurance Corporation of India and others, the Honourable Supreme Court has held as follows :

> "6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissble under the Rules. So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that is could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and migh casually be getting work as a painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate apppointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account."

(iii) The High Court of Allahabad in 2005 (I) LLJ 796 in the case of Chief General Manager, State Bank of India and others vs. Durgesh Kumar Tiwari, has held as follows :

"4. The claim of the respondent in this appeal was rejected by the Bank by order dated April 9, 1999 on the ground that the financial condition of the family appeared to be sound (vide Annexure-CA-1 to the writ petition). While rejecting the case of the writ petitioner, hypothetical source of income was taken into consideration, but it was not considered that the saving was spent initially for treatment of the father of the writ petitioner, and the meagre retirement benefits on the marriage of the daughter and treatment of the mother.

9. In Ajay Kumar Shevdu vs. Chief Security Commissioner 2004 (2) UPLBEC 1503, this Court held that if the application for compassionate appointment was filed within time then merely because the applicant was unnecessarily dragged from pillar to post for getting employment and this caused that delay he should not be denied the appointment. We agree with this view. "

11. On the other hand, learned Counsel appearing for the respondents submitted that compassionate ground appointments are given on verifying the indigent condition of the family of the deceased employees due to the sudden demise of the employee and in the case of the petitioner, the Department has conducted Spot Verification and found that his family is not in an indigent circumstance. Learned counsel contended that when the petitioner's brother is well placed in a Bank and the deceased employee's family has been enjoying the terminal benefits and a good amount as pension, the averment of the petitioner that his family is in an indigent condition is unbelievable and offering compassionate appointment as a matter of course, irrespective of the financial condition of the family of the deceased Government Servant is legally impermissible.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

12. In support of his contentions, learned Counsel for the respondents relied on the following decisions :

(i) In 2005 (1) ALSLJ SC 30 in the case of Pubjab National Bank and others vs. Ashwini Kumar Taneja, the Honourable Supreme Court has held as follows:

> "8. One other thing which needs to be considered is whether the retiral benefits are to be taken into consideration while dealing with prayer for compassionate appointment. The High Court was of the view that the same was not be to taken into consideration. The view is contrary is what had been held recently in The General (D & P.B.) & Others vs. Kunti Tiwary and another, Civil Appeal 126 of 2004 disposed of on 05.01.2004. It was categorically held that the amounts have to be taken into consideration. In the instant case, there was a scheme called 'Scheme for Employment of the Dependants of the Employee who die while in the service of the Bank Service on Compassionate Grounds' (in short the 'Scheme') operating in the appellant No.1 Bank which categorically provides as follows :
>
> "Financial condition of the Family :
>
> The dependents of an employee dying in harness may be considered for compassionate appointment provided the family is without sufficient means of livelihood, specifically keeping in view the following :
>
> (a) Family pension;
> (b) Gratuity amount received;
> (c) Employee's/Employer's contribution to PF;
> (d) Any compensation paid by the Bank or its Welfare Fund;
> (e) Proceeds of LIC Policy and other investments of the deceased employee;
> (f) Income for family from other sources;
> (g) Employment of other family members;
> (h) Size of the family and liabilities, if any, etc." ..."

(ii) The Supreme Court in (2006) 7 SCC 350 in the case of Union Bank of India and others vs. M.T.Latheesh, has held as follows :

> "37. It is also settled law that the specially constituted authorities in the rules or regulations like the competent authority in this case are better equipped to decide the cases on facts of the case and their objective finding arrived on the appreciation of the full facts should not be disturbed. Learned Single Judge and the Division Bench by directing appointment has fettered the discretion of the appointing and selecting authorities. The Bank had considered the application of the respondent in terms of the statutory scheme framed by the Bank for such appointment. After that even though the Bank found the respondent ineligible for appointment to its service, the High Court has found him eligible and has ordered his appointment.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

This is against the law laid down by this Court. It is settled law that the principles regarding compassionate appointment that compassionate appointment being an exception to the general rule, the appointment has to be exercised only in warranting situations and circumstance s existing in granting appointment and guiding factors should be financial condition of the family. The respondent is not entitled to claim relief under the new Scheme because the financial status of the family is much above the criterion fixed in the new Scheme."

13. I have given due consideration to the arguments made by the learned counsel for the petitioner and the respondents as well and also the judgments relied on by them in support of their arguments.

14. Admittedly, the petitioner's father, while working as Senior Section Supervisor at BSNL, suddenly died intestate of brain stroke leaving behind the petitioner, his mother and his two other sons. Since he died while he was in service, one of the family members being eligible for a job in the department, the petitioner was nominated by the family members. Accordingly, the petitioner's mother nominated him and as per the procedure contemplated, the petitioner applied on 28.11.198 and according to norms prescribed in Annexure II of Central Civil Service (pension) Rules, it was declined by the second respondent vide communication dated 20.08.1999. Thereafter, on 03.11.1999, he replied to him with necessary enclosures explaining the actual facts clarifying that his elder brother is employed, married and settled separately. The petitioner had also brought to the notice of the respondents the indigent circumstances in which they are living stating that:

(i) his elder brother who is married and living separately at Pudukkottai, is employed in a company incurring losses since April 1998 and he is not of any support to their family;

(ii) from the monthly pension, a sum of Rs.500/- is being paid to the paternal grandmother who is under the care and custody of his elder brother;

(iii) the younger brother was studying III year B.E. without any scholarship either from the Government or from any Trust and his education requires considerable expenditure which was being met and taken care of by the petitioner;

(iv) the plot allotted by T.N.H.B. measuring 1,800 sq. ft. was not owned by the petitioner as there was a balance of Rs.1 lakh to be paid to T.N.H.B. and a sum of Rs.46,000/- had already been borrowed by his father to be paid as advance;

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(v) his father's terminal benefits were utilised for various purposes, viz., to treat his father who was down by cerebral attack, to treat his ailing mother, for meeting certain expenditure incurred by his father; and

(vi) since his father had not given proper nomination during his lifetime 50% of the General Profident Fund was paid to his grand mother

15. It is also seen that the petitioner has complied with the requirements such as production of relevant documents, etc. as per the procedure contemplated for the purpose of appointment under compassionate ground. Needless to say, the overall financial condition of the petitioner's family and the surrounding circumstancse need to be looked into while considering the case of a compassionate appointment.

16. While deciding the case on hand, it would be worthwhile to refer to the impugned order passed by the second respondent and the relevant portion for consideration reads thus:

"The Government servant, a SSS expired on 30.10.1998 at the age of 57 years survived by his mother, wife and 3 sons. The elder son is employed in Ind Bank Housing Ltd. and getting a salary of Rs.4,498/- per month. He, however is married and said to be living separately. The applicant is 32 years of age. The family pension is Rs.4,821/- per month and other terminal benefits were Rs.4,16,125/- only. Keeping in view the overall aspects of the case, i.e. the family pension, terminal benefits, elder son working status and the age of the applicant, the committee does not find the family living in indigent condition and rejected the request."

17. From a reading of the above impugned order, it can be seen that the reasoning given by the second respondent for rejecting the petitioner's claim of compassionate appointment is three-fold which is as under:

a. Employment of the elder son of the deceased in Indbank Housing and his salary of Rs.4,498/-.

b. Family pension of Rs.4,821/- per month received by the petitioner's family

c. Terminal benefits of Rs.4,16,125/- received by the petitioner's family.

18. As far as the first reason assigned by the second respondent is concerned, i.e. the employment of the elder son of the deceased, the second respondent himself has admitted that the petitioner's elder brother is drawing a salary of Rs.4,498/-, married and living separately with his

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

wife and children. When such is the case, one cannot expect him to contribute to the petitioner's family and that too when his livelihood itself is at stake since the company where he was employed was not doing well and this is evident from the termination order of the petitioner's brother which specifically states that it has not been running well since 1998. Therefore, the first reason assigned by the second respondent sound ex facie incorrect.

19. Coming to the second resason cited in the impugned order that the petitioner's family is receiving family pension of Rs.4,821/-, admittedly, the petitioner's father did not give proper nomination during his lifetime and hence, his mother has been getting Rs.500/- from the pensionary benefits in addition to 50% of the General Provident Fund which she has received. Secondly, engineering education undergone by the petitioner's younger brother, without any sort of scholarship or aid from any source whatsoever, had to be taken care of and it could not have been discontinued abruptly just because his father had died. In addition to these, the petitioner's family has also to look after its basic requirements, viz., food, clothing and shelter, particularly in the present days' cost of living. While considering these aspects, I am of the considered view that the second reasoning stated in the impugned order cannot be a just and fair ground to reject the petitioner's case.

20. Lastly, with regard to the third reasoning assigned in the impugned order that the petitioner's family has received terminal benefits of Rs.4,16,125/-, it is the case of the respondents that the petitioner has spent only Rs.35,000/- towards his mother's treatment, Rs.10,000/- towards his father's treatment, Rs.45,000/- towards funeral expenses and Rs.75,000/- towards his elder brother's marriage expenses and thus, the petitioner's family had spent only 50% of the terminal benefits and the balance 50% is still available for their survival. On the other hand, the petitioner's case is that his father underwent treatment for the cerebral attack suffered by him and a considerable expenditure was incurred for his treatment but the amount of Rs.10,000/- which the respondents claim to have been spent for treating cerebral attack is too meagre. The petitioner's case in this regard certainly deserves consideration as an ailment such as cerebral attack may not be treated for a meagre sum of Rs.10,000/- and that too in a private hospital and as such, the third reasoning also assigned by the second respondent does not sound valid for rejection the petitioner's claim of compassionate appointment. In nutshell, it has to be naturally concluded that the second respondent is not correct in coming to the conclusion that the petitioner's family is not living in an indigent circumstance.

21. In this context, it would be worth-referring to a judgment of the Supreme Court reported in AIR 1989 SC 1976 in the case of Sushma Gosain and others vs. Union of India and others, wherein while dealing with a similar circumstance, it was held that the purpose of providing appointment on compassionate ground is to mitigate the hardship due to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

death of the bread earner in the family; such appointment should, therefore, be provided immediately to redeem the family in distress; it is improper to keep such case pending for years and if there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant.

22. Further, in its judgment reported in (2005) 10 SCC 289 in the case of Govind Prakash Verma vs. Life Insurance Corporation of India and others, the Supreme Court has categorically held that the matter of gainful employment of an elder brother cannnot be acted upon and the terminal benefits received by the widow and the family pension received by the family of the deceased cannnot be taken into account while deciding matters pertaining to compassionate appointment. But, it should be said that the respondents, in the instant case, have taken into account the pensionary benefits, terminal benefits and the gainful employment of the petitioner's elder brother while negativing the petitioner's legitimate claim, which in my opinion goes against the very ruling of the Supreme Court in the case referred to above which is squarely applicable to the case on hand. Therefore, the order suffers from the legal inifirmities and the total non-application of mind to assess the real circumstances of the bereaved family and their indigent circumstances.

23. In the Punjab National Bank case relied on by the respondents, the Supreme Court has only observed that the dependants of an employee dying in harness may be considered for compassionate appointment provided the family is without sufficient mode of livelihood specifically keeping in view the family pension, Gratuity and General Provident Fund. But, in the instant case, as already seen, only a small portion of the terminal benefits is left and even a certain sum is shared by the mother of the deceased who is staying with the petitioner's brother.

24. As regards the reliance made by the counsel for the respondents on M.T.Latheesh case, the Supreme Court has held that the High Court should not have interfered in the matter of compassionate appointment when the appellant-bank had considered the applicant's case in terms of the statutory scheme. But, in the case on hand, the second respondent has rejected the petitioner's case not based on any statutory scheme but only by wrongly coming to the conclusion that the petitioner's family is not in an indigent condition and on that count, this judgment also is distinguishable on facts.

25. In view of the discussion made above and bearing in mind the aspect that the object of providing compassionate appointment is to mitigate the sufferings of the bereaved family which is to be considered in the light of the above settled principles and in a beneficial manner, the impugned order which suffers from total non-application of mind and non-consideration of material records, is set aside; the matter is remitted to the respondents and the respondents are directed to consider the petitioner's case afresh, by taking note of the principles laid down

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

by the Supreme Court in Sushma Gosain case and Govind Prakash Varma case in particular and pass appropriate orders within a period of 12 weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

abe

To

1. The Chairman cum Managing Director
Bharat Sanchar Nigam Ltd., (BSNL)
No.20, Asoka Road
New Delhi - 110 001

2. The Chief General Manager
Bharat Sanchar Nigam Ltd., (BSNL)
Tamil Nadu Circle
Anna Salai, Chennai 600 002

3. The Assistant General Manager (R & G)
Bharat Sanchar Nigam Ltd., (BSNL)
Tamil Nadu Circle
Anna Salai, Chennai 600 002.

+ 1 CC To Mr. D.Saravanan, Advocate SR NO.66328

+ 1 CC To Mr. M.S.Velusamy, Advocate SR NO.66504

W.P.No.6060 of 2004

vg[co]
gp/13.11.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/